

Editor's note: appealed - dismissed without prejudice, Civ.No. 82-1777 JM (D.Colo. Apr. 25, 1984)

JOSEPH V. DODGE
d.b.a. ROCKY MOUNTAIN MINERAL CO.

IBLA 80-619

Decided October 24, 1980

Appeal from decision of the Colorado State Office, Bureau of Land Management, declaring 19 mining claims null and void. CMC 145050-145068.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment--Mining Claims: Recordation

Where the owner of unpatented mining claims located before Oct. 21, 1976, files copies of the notices of location of these claims prior to the Oct. 22, 1979, deadline for so doing, but fails to file evidence of annual assessment work during the preceding assessment year on or before this deadline, his claims are properly declared abandoned and void.

APPEARANCES: Joseph V. Dodge, d.b.a. Rocky Mountain Mineral Co., pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On October 19, 1979, Joseph V. Dodge, d.b.a. Rocky Mountain Mineral Co., filed copies of certificates of location of 19 mining claims, designated CMC 145050-145068, all located prior to October 21, 1976, with the Colorado State Office, Bureau of Land Management (BLM). However, Dodge filed only copies of the notices of location; he did not file evidence of annual assessment work performed during

the preceding assessment year. Accordingly, on April 10, 1980, BLM issued a decision declaring the claims abandoned and void for failure to comply with the requirements of 43 CFR 3833.2-1(a). Dodge (appellant) appealed this decision.

[1] Under section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), and the corresponding Departmental regulation, 43 CFR 3833.1-2(a), the owner of unpatented mining claims such as these which are located or relocated on or before October 21, 1976, is required to file copies of the official records of the notices of location of these claims on or before October 22, 1979, in the BLM office having jurisdiction over the lands covered thereby. Appellant complied with this requirement when he filed the copies of the notices of location on October 19, 1979.

However, there is a second, separate requirement which appellant failed to meet. Under section 314(a)(2) of FLPMA, 43 U.S.C. § 1744(a)(2) (1976), and 43 CFR 3833.2-1(a), 1/ the owner of unpatented mining claims located on or before October 21, 1976, in addition to timely filing copies of notices of location, must also file evidence of annual assessment work performed during the preceding assessment year, or, where appropriate, notices of intention to hold the claims, with BLM on or before October 22, 1979, at the latest. Kenneth K. Parker, 48 IBLA 129 (1980); Alice E. Deetz, 48 IBLA 59, 61 (1980); Jim Adams, 47 IBLA 281 (1980).

Appellant failed to supply the required evidence of annual assessment work for the preceding assessment year on or before October 22, 1979, as required by 43 CFR 3833.2-1(a). This requirement is strictly enforced, and failure to comply with it requires that the claims be declared void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a) 2/; Edward P. Murphy, 48 IBLA (1980); A. J. Grady, 48 IBLA (1980); John F. Sherwood, 48 IBLA 180 (1980). Kenneth K. Parker, *supra*; Alice E. Deetz, *supra*; G. H. Monk, 47 IBLA 213 (1980).

1/ The controlling regulation, 43 CFR 3833.2-1(a), provides as follows:

"The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim."

2/ The controlling regulation, 43 CFR 3833.4(a), provides that "[t]he failure to file an instrument required by * * * [43 CFR 3833.2-1] within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, * * * and it shall be void." (Emphasis supplied.)

Appellant, while admitting that he failed to file either evidence of annual assessment work or notices of intention to hold the claims, asserts that he would have filed the latter, but for his having been misled by BLM. He states that he telephoned BLM on October 22, 1979, 3/ the last day for making the required filing, and notified a BLM employee that he stood ready to deliver notices of intention to hold the claims filed there timely, only to be advised that doing so would not suffice to protect the claims. He argues that this advice was incorrect and that, but for having been misinformed by BLM, he would have protected his claims by filing notices of intention to hold them.

Appellant is mistaken that BLM misinformed him, as BLM's indication that notices of intention to hold these claims would not have sufficed here was correct. Filing a notice of intention to hold a claim may substitute for filing evidence of annual assessment work only where the obligation to perform annual assessment work is suspended or deferred, or where it has not yet accrued; or where the reason for nonperformance is provided. 43 U.S.C. § 1744(a)(1) (1976); 43 CFR 3833.2-3(a); Silvertip Mining & Exploration, 43 IBLA 250, 252 (1979); Juan Munoz, 39 IBLA 72 (1979); and Donald H. Little, 37 IBLA 1 (1978). Such was not the case here during the preceding assessment year.

In any event, even if BLM had misinformed appellant, he could gain no rights thereby, as reliance upon information or opinion of any officer, agent, or employee cannot operate to vest any right not authorized by law. 43 CFR 1810.3; Juan Munoz, supra, and cases cited therein.

Appellant argues that he is not required by Colorado or Federal law to record evidence of annual assessment work. This is also inaccurate. 4/ While it is apparently true that Colorado law does not require a mining claimant to record proof of annual assessment work, 5/ Federal law does now require that a claimant file this

3/ Appellant indicates that on October 19, 1979, BLM had undertaken the courtesy of attempting to notify him that there was a problem with his filing, but that he had been out of town when the call came and could not contact BLM until October 22.

4/ In support of his assertion that Federal law does not require recordation of evidence of annual assessment, appellant has cited a "Handbook of Mineral Law" which evidently predates FLPMA and so does not consider its provisions.

5/ Of course, Colorado law does allow a claimant to protect his claim against "jumping" by providing for discretionary recordation of evidence of annual assessment work. In Colorado, in lieu of protecting himself by recording such documents, which tend to establish the validity of his claims, a mining claimant may rely on his ability to prove the validity of his claim in court.

proof. Section 314(a)(1) of FLPMA, 43 U.S.C. § 1744(a)(1) (1976), requires that a mining claimant must file an affidavit of annual assessment work performed on his claim in the office where the location notice or certificate is recorded, i.e., with local state authorities. Section 314(a)(2) of FLPMA, supra, requires further that the claimant file a copy of this affidavit with BLM. Thus, a claimant is now required not only to perform annual assessment work (30 U.S.C. § 28 (1976)), but also to file annually evidence of this work both with the local recorder's office (43 U.S.C. § 1744(a)(1) (1976)) and with BLM (43 U.S.C. § 1744(a)(2) (1976)). Robert Alameda, 48 IBLA 178, 179 (1980). Appellant's failure to comply with those requirements compelled the voiding of his claims. 6/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

6/ The claims are named: Rito Granite, April Fool Granite, Colorado Rose Granite Quarry, Pink Granite, Colorado Rose Granite, Buckhorn, Colorado Pink Granite, Sunset, Sunset No. 2, Sunrise, Sunrise No. 2, Red Rock, Eagle Nest No. 2, Colorado Pink Granite (amended), Alma, Eagles Nest, Eagle, Excelsior, and Rainbow Placer mining claims.

ADMINISTRATIVE JUDGE GOSS CONCURRING:

Appellant does not allege that BLM personnel dissuaded him from filing notices of intention to hold with the county recorder by October 22, 1979, as required by 43 U.S.C. § 1744(a)(1) (1976). It appears no such filing was made. ^{1/} Under section 1744 (c) the claims must therefore be determined to be abandoned and void, regardless of whether any incorrect instructions were given as to filing with the Department under 43 CFR 3833.2, amended effective March 16, 1979. 44 FR 9723 (February 14, 1979). Under the statute and regulation, the notice filed with the Department is a copy of that filed with the county recorder.

Joseph W. Goss
Administrative Judge

^{1/} For this reason it is not necessary to consider the applicability of United States v. Wharton, 514 F.2d 406 (9th Cir. 1975).

